

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2004-63-C - ORDER NO. 2006-128  
MARCH 3, 2006

IN RE: BellSouth Telecommunications, Inc.,	)	PROTECTIVE
	)	ORDER
Petitioner,	)	
	)	
vs.	)	
	)	
NewSouth Communications Corporation,	)	
	)	
Defendant.	)	

On February 8, 2006, the Office of Regulatory Staff (“ORS”), BellSouth Telecommunications, Inc., and NewSouth Communications Corporation filed a Motion for a Protective Order with the Commission. The Commission grants the Motion and adopts the following Order to facilitate the prompt resolution of disputes over confidentiality and permit the sharing of information while adequately protecting material entitled to confidential, proprietary, or trade secret protection:

The term “Confidential Information” refers to any information in written, oral or other tangible or intangible forms which may include, but is not limited to, work papers, summaries, spreadsheets, models, diagrams, data, customer information, reports, or other technical, financial, or business information, designated as “Confidential Information” by a producing party if the party believes in good faith that the material is confidential or proprietary and is entitled to protection from public disclosure under the South Carolina

Rules of Civil Procedure or any provision of South Carolina or federal law and the material is furnished pursuant to discovery requests or otherwise produced during this proceeding. The term “Confidential Information” includes information which is the subject of Section 222 of the 1934 Communications Act, as amended (the “Federal Act”).

2. The term “this Proceeding,” for purposes of this Protective Order, shall include only Docket No. 2004-63-C and any appeals thereof.

3. **General.** The Parties will be bound by the terms of this Protective Order upon its entry and may thereafter exchange Confidential Information. A Party shall be entitled to seek enforcement of (or other appropriate relief, including sanctions pertaining to) this Protective Order before the Commission, or any other authority having competent jurisdiction, for any breach or threatened breach of this Protective Order. This Protective Order shall control the production and disclosure of all materials deemed “Confidential Information.”

4. **Designation of Material.** Confidential Information provided to the Commission or to any party in this Proceeding must be filed in a sealed envelope with each page marked “Confidential” in red ink, or with other markings that are reasonably calculated to alert custodians of the material to its confidential or proprietary nature. Confidential non-written information shall be so indicated by asserting the confidentiality of such information at the time of the disclosure.

5. **Material Provided to Parties.** Except with the prior written consent of the party who has designed a document or other non-written information as “Confidential

Information,” or as hereinafter provided, no Confidential Information may be disclosed to any person.

6. **Permissible Disclosure of Confidential Information.** Notwithstanding the provisions of paragraph 5 above, Confidential Information provided pursuant to this Protective Order may be disclosed without prior consent to the following persons or entities, but only under the following conditions, and only to the extent necessary to assist in prosecuting this Proceeding:

a. Counsel of record representing a party in this Proceeding and any legal support personnel (e.g. paralegals, docket Managers, and clerical employees) employed by such counsel and acting at the direction of counsel; court reporters, stenographers, or persons operating audio or video equipment at hearings or depositions.

b. Other employees, officers, directors of a party or its affiliates, or consultants or experts retained by a party, who are not currently involved in the marketing, manufacturing or strategic or competitive decision making, including but not limited to, the sale or marketing or pricing of any products or services on behalf of the receiving party, unless the producing party gives prior written authorization for specific individuals in the prohibited categories above, to review the Confidential Information. If the producing party refuses to give such written authorization, the receiving party may for good cause shown, request an order from the Commission, allowing an individual in the prohibited category above to have access to the Confidential Information. Individuals who become reviewing representatives under this paragraph agree that they will not use the Confidential Information made available pursuant to this Protective Order to plan, develop, or market any computerized telecommunications costing models. Nor will individuals who become reviewing representatives under this Agreement use the Confidential Information to engage or consult in the marketing, manufacturing, or provision of any products or services on behalf of the receiving party or its affiliates.

c. Individuals obtaining access to Confidential Information under this Protective Order shall not disclose Confidential Information made available pursuant to this Order to any person who is not authorized under this section to receive such information.

d. Each individual who is provided access to Confidential Information made available pursuant to this Protective Order must first sign, and have notarized, a statement affirmatively stating that the individual has reviewed this Protective Order and understands and agrees to be bound by the limitations it imposes on the individual. Attachment A to this Order is the notarized statement to be used.

e. Each individual reviewing Confidential Information made available pursuant to this Protective Order may take notes regarding the information. The notes and any subsequent work product based on the notes may not be replicated or copied, except as necessary for distribution to other representatives who have signed and notarized the statement attachment as Attachment A hereto, or except in connection with offering such notes or work product into evidence or otherwise into the record pursuant to paragraph seven below. The reviewing individuals shall take reasonable measures to identify and track all such notes, copies, and work product so these materials can be identified and destroyed or returned in compliance with Paragraph f below.

f. At the conclusion of Docket No. 2004-63-C, including all appeals and/or petitions, all such work product and any other Confidential Information obtained hereunder, including any copies or notes, (other than any copies submitted to and included in the official Commission record) shall be assembled from the persons having same and destroyed or returned to the producing party, and counsel shall notify the producing party in writing that this destruction or return has been completed.

7. Each party bound by this Protective Order agrees that if it attempts to submit Confidential Information into evidence or into the record of any proceeding before any court or agency, it will work cooperatively with counsel for the producing party to do so in a manner that, to the fullest extent possible, protects such Confidential Information from public disclosure.

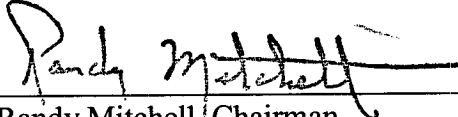
8. **Subpoena by Courts or Other Agencies and Other Requests.** If a court or other administrative agency subpoenas or orders production of Confidential Information that a party has obtained under the terms of this Protective Order, or if a party receives any other request to produce Confidential Information and believes that it

is obligated to comply with such request, the party requested to produce the Confidential Information shall promptly (within two (2) business days) notify the producing party of the pendency of such subpoena or order to allow the producing party sufficient time to object to that production or seek a protective order.


9. **Non-termination.** The provisions of this Protective Order shall not terminate at the conclusion of this Proceeding.

10. **Responsibilities of the Parties.** Parties are responsible for employing reasonable measures to control, consistent with this Protective Order, duplication of, access to, distribution of Confidential Information. A receiving party shall protect such Confidential Information by using the same degree of care (which shall be no less than reasonable care) to prevent its unauthorized disclosure as the receiving party exercises in the protection of its own confidential information.

BY ORDER OF THE COMMISSION:

  
\_\_\_\_\_  
Randy Mitchell, Chairman

ATTEST:

  
\_\_\_\_\_  
G. O'Neal Hamilton, Vice-Chairman

(SEAL)

ATTACHMENT A

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

**CERTIFICATE OF AUTHORIZED REVIEWING REPRESENTATIVE**

BEFORE ME, the undersigned authority, duly Commissioned and qualified in and for the  
State and County aforesaid, personally came and appeared (insert  
name), who, being by me first duly sworn, deposed and said as follows:

I certify my understanding that Confidential Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order adopted by the South Carolina Public Service Commission in Docket No. 2004-63-C, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of "Confidential Information", and any notes, memoranda, or any other form of information regarding or derived from Confidential Information shall not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purpose of preparing for and conducting litigation in this Proceeding.

Signature:

\_\_\_\_\_

Date of Execution: \_\_\_\_\_  
(Type or Print below)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

SWORN TO AND SUBSCRIBED BEFORE ME on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
(NOTARY PUBLIC) (SEAL)